

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

-VS- } ORDER

NICHOLAS GUERRERO,
Defendant. } **UNITED STATES MARSHAL
ACTION REQUIRED**

Pending before the Court is the parties' Joint Motion to Grant the Defendant's 28 U.S.C. § 2255 Motion (Ct. Rec. 695). Defendant is represented by Brian Sanderson; Assistant United States Attorney Jane Kirk represents the Government. The parties request that the Court grant Mr. Guerrero's 28 U.S.C. § 2255 Motion alleging ineffective assistance of counsel because they agree that there is not evidence that Mr. Banda informed Mr. Guerrero of his right to appeal. The parties further agree that the proper remedy would be to allow Mr. Guerrero to file a direct appeal.

The Court has reviewed the file and Motion and is fully informed. Accordingly,

IT IS ORDERED that:

1. The parties' Joint Motion to Grant the Defendant's 29 U.S.C. § 2255 Motion, filed December 14, 2009, Ct. Rec. 695, is GRANTED.

2. Defendant's Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, filed March 31, 2009, **Ct. Rec. 679**, is **GRANTED**.

3. To remedy the ineffective assistance of counsel cause by counsel's failure to inform Mr. Guerrero of his right to appeal, the Court orders that Mr. Guerrero shall be given

1 the opportunity to file a direct appeal to his original conviction and sentence to the extent
2 allowed by his Plea Agreement. The appeal time shall start from the filing of this Order and
3 run for 10 days.

4 4. The United States Marshal shall facilitate the filing of Mr. Guerrero's direct appeal
5 by ensuring he remains in the district for the 10 days allowed to file his appeal.

6 5. The December 30, 2009 case management deadline and the January 5, 2010 motion
7 and evidentiary hearing are **STRICKEN**.

8 The District Court Executive is directed to:

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- File this Order and provide copies to counsel **AND TO** the United States Marshals Service;
- **TERMINATE** the December 15, 2009 motion hearing, December 30, 2009 case management deadline, and the January 5, 2010 motion and evidentiary hearing; and
- **CLOSE** the corresponding civil file, **CV-09-3035-WFN**.

15 **DATED** this 14th day of December, 2009.

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s/ Wm. Fremming Nielsen
WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE

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